

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1. QUIBIDS, L.L.C., an Oklahoma limited liability company,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:10-cv-00639-R
)	
1. 1524948 ALBERTA LTD., d/b/a TERRA MARKETING GROUP, a Canadian entity, represented by counsel for SWIPEBIDS.com to be the owner of the domain name swipebids.com,)	
)	
Defendant.)	

**MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER
AND BRIEF IN SUPPORT**

Pursuant to Fed.R.Civ.P. 65, the plaintiff, QuiBids, L.L.C. (“QuiBids”), respectfully moves the Court for an *ex parte* temporary restraining order against the defendant, 1524948 Alberta, LTD (“Defendant”) as the entity represented by opposing counsel to own domain name www.swipebids.com, and responsible for the operation and content of this website, for such a period of time until this Court may set an evidentiary hearing to consider QuiBids pending Motion for Preliminary Injunction. An *ex parte* temporary injunction is necessary because Defendant, with the assistance of its disclosed counsel, is hiding its true identity, location and address for service in an effort to evade process and continue its unlawful activities. In support of this motion, QuiBids submits the following Brief in Support.

BRIEF IN SUPPORT

A. STATEMENT OF FACTS

1. On June 21, 2010, QuiBids filed this action against the owner of the website SwipeBids.com (the “Defendant”). The identity of the Defendant is unknown because Defendant is intentionally shielding its identity by utilizing an internet proxy registration service to mask and hide its ownership of the website SwipeBids.com.

2. Counsel for QuiBids discovered, however, that Defendant is represented by the law firm of Kronenberger Burgoyne, of San Francisco, California. In correspondence and phone calls between counsel for the parties, counsel for Defendant initially refused to provide the identity of the owner of the SwipeBids.com website (i.e., stating in a phone call that he was “not authorized” to disclose that information).

3. Subsequently, after being provided a courtesy copy of QuiBids’ Complaint, Kronenberger Burgoyne represented that the SwipeBids.com website is owned and operated by Terra Marketing Group, allegedly having offices at Sun Life Plaza, West Tower, 144-4 Avenue SW, Suite 1600, Calgary T2P 3N4, Canada.

4. QuiBids counsel was unable to identify any records for any such entity on file with Canada or with the Business Tracker database on Westlaw. Like the SwipeBids.com website, the identity of the owner of the Terra Marketing Group website (terramarketinggroup.com) is shielded by an internet proxy registration service.

5. After discovering that no entity named Terra Marketing Group actually exists, counsel for QuiBids once again contacted counsel for Defendant to inquire who was behind the SwipeBids.com website. Counsel for Defendant at that time informed

counsel for QuiBids that Terra Marketing Group was a fictitious d/b/a name. Counsel for Defendant then represented that the underlying entity for Terra Marketing Group was 1524948 Alberta Ltd. but provided no address or other identifying information.

6. As with Terra Marketing Group, QuiBids counsel is unable to indentify any records for any such entity on file with Canada or with the Business Tracker database on Westlaw and believes no such entity actually exists. To this end, counsel for QuiBids sent Kronenberger Burgoyne a letter on July 14, 2010, to identify the “real” owner of the SwipeBids.com website or an address for service of process. The letter is attached hereto as Exhibit A. As of this date, counsel for QuiBids has not received any response from Kronenberger Burgoyne.

B. QUIBIDS IS ENTITLED TO A TEMPORARY RESTRAINING ORDER.

A restraining order is designed to, *inter alia*, prevent irreparable injury until such time as the Court may determine a party’s application for a preliminary injunction. Wright & Miller, *Federal Practice and Procedure*, § 2951. The applicant need only show that an immediate and irreparable injury will result to the applicant before the adverse party can be heard in opposition at the hearing for a preliminary injunction. *Id;* accord *Smotherman v. United States*, 186 F.2d 676, 677 (10th Cir. 1950).

A temporary restraining order is warranted in this action. QuiBids has shown in its Motion for Preliminary Injunction that Defendant has unlawfully and wrongfully: (a) infringed QuiBids’ service mark and trade dress; (b) engaged in unfair trade practices; and (c) engaged in false and deceptive advertising. Moreover, QuiBids has suffered and

will continue to suffer immediate and irreparable injury before Defendant can be heard in opposition to this motion because Defendant, with the assistance of its disclosed counsel, is hiding its true identity, location and address for service in an effort to evade process and continue its unlawful activities. Defendant's willful evasion of service, and concealing of its identity, should not provide Defendant a license for its continued infliction of irreparable harm on QuiBids.

CONCLUSION

For the reasons set forth above, the Court should grant QuiBids' Motion for *Ex Parte* Temporary Restraining Order granting the following relief:

1. That Defendant, and its employees, agents, contractors, heirs and assigns, be restrained from:
 - (a) Using the News 9 video in any way in connection with online auction services or advertising therefore; and
 - (b) Falsely claiming QuiBids' CEO, Matt Beckham, is the CEO of SwipeBids.com.with the restraining order to be served on the internet website hosting company for the SwipeBids.com website;
2. That the restraining order remain in place until service of process can be effected on Defendant by publication, or Defendant's identity can be determined by investigative means and Defendant served with process, and a hearing can be held on QuiBids' Motion for Preliminary Injunction; and

3. To the extent the Court determines a hearing is necessary for the Court to enter the requested restraining order, that the Court set this matter for hearing as soon as practicable.

Respectfully submitted,

/s/ Michael D. McClintock

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